THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 9869 OF 2007

Dated 13th August 2007

Between:

K.N.B.V. Prasada Rao

…Petitioner

and

The Govt. of A.P., rep.by its Principal Secretary,
Law (LA&J Courts, CI) Department, Hyderabad,
& another.

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 9869 OF 2007

O R D E R:

Petitioner is an Advocate practicing in the Courts at Srikakulam. He has been appointed as Part Time Official Receiver, under Section 57 of the Provincial Insolvency Act, 1920 (for short "the Act"), by the Government of Andhra Pradesh, through their orders in G.O.Ms.No.1986, Law (LA & J Home CTs.C) Department, dated 22.11.2004. He was kept in probation, for a period of two years, from the date of taking charge. On the basis of this order, he started functioning. Through order, dated 9.12.2006, the District Judge, Srikakulam, the 2nd respondent herein, informed the petitioner that his term is not extended, in view of the observation made by this court on 8.12.2006. The petitioner was directed to hand over the charge to the Administrative Officer of the Court. The proceedings are challenged in this writ petition.

Learned counsel for the petitioner submits that the appointment

was made by the 1st respondent, in exercise of statutory power, and it was not open to the 2nd respondent, to terminate the same. He further contends that certain damaging remarks were made against the petitioner, without issuing any notice, much less conducting any enquiry.

Smt.M.Bhaskara Laxmi, learned Standing Counsel for the 2nd respondent, on the other hand, submits that the appointment of the petitioner is only part time in nature, and that through the impugned order, the unsatisfactory performance of the petitioner, during the period of probation, was notified and nothing more.

The Appointing Authority, under Section 57 of the Act, is the 1st respondent. According to the practice in vogue, the petitioner was appointed on Part time basis, and he was placed in probation for a period of two years. During this period, certain complaints are said to have been received, as regards the performance of the petitioner. The regularization of the petitioner, after the expiry of the period of probation, depends upon the certification of his performance by the High Court. It was in this context, that the performance of the petitioner was assessed, and it was found to be not satisfactory.

Even where the Appointing Authority refuses to confirm the appointment, or does not extend the probation, reasons need not be recorded. However, if the refusal to extend the probation, or confirm the appointment is on account of any allegations as to misconduct, notice is to be issued to the affected party.

The impugned order does not emanate from the Appointing Authority. At the same time, it tells upon the performance of the petitioner and undesirability of his being confirmed. In such an exercise, no derogatory remarks can be made against the petitioner.

The observation that the petitioner does not deserve to be continued, would certainly impinge upon his career. Such remarks can be made, only after an enquiry is held. Admittedly, no such enquiry was conducted, in this case.

Therefore, the writ petition is disposed of, directing that the impugned order dated 9.12.2006 shall be treated as the one notifying the disinclination, on the part of the concerned authorities, not to confirm the petitioner and nothing more, particularly, touching upon his credibility as an Advocate. There shall be no order as to costs.

_____

13th August 2007

PAN